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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/831,600	05/11/2001	Jouni Kivela	0365-0501P	5717
2292 7590 11/30/2007 BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747			EXAMINER CHEUNG, WILLIAM K	
			ART UNIT 1796	PAPER NUMBER
			NOTIFICATION DATE 11/30/2007	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

## Office Action Summary

Application No.

09/831,600

Applicant(s)

KIVELA ET AL.

Examiner

William K. Cheung

Art Unit

1796

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 September 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3,4,6-25 and 29-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,4,6-25 and 29-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 083001
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Request for Continued Examination***

1. The request filed on September 12, 2007 for a Request for Continued Examination (RCE) under 37 CFR 1.53(d) based on parent Application No. 09/831,600 is acceptable and a RCE has been established. An action on the RCE follows.
2. In view of amendment filed September 12, 2007, new claim 32 has been added. Claims 1, 3, 4, 6-25, 29-32 are pending.
3. In view of amendment filed September 12, 2007, the objection to the specification is moot.

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 13, 14, 29 are rejected under 35 U.S.C. 102(b) as being anticipated by Bernier et al. (US 5,834,571), for the reasons adequately set forth from paragraph 6 of the office action of October 12 2006.

Bernier et al. (col. 39, claim 1) claim a method of producing a polymer in a continuously operated gas phase reactor, polymerizing at least one monomer in a bed containing active catalyst formed by catalyst and polymer particles suspended in a fluid (col. 39, line 25-33), and adjusting a discharge rate (continuously or intermittently) to withdraw polymer product from the reactor (col. 39, 40-42). Since the withdrawal of the polymer product also accompanied with the withdrawal of the fluidized recycle gas, the examiner has a reasonable basis that the claimed "adjusting a discharge rate of the polymer powder so as to maintain a constant bed level during polymerization" is met by Bernier et al. since Bernier et al. (col. 39, line 45-49) clearly indicate that the fluidized bed level is maintained by withdrawing recycle gas from the reactor.

Because the polymer product discharge rate of Bernier et al. can be conducted intermittently from the reactor, and that the agglomerate particles contents withdrawn from the fluidized bed reactor are time dependent, therefore, the examiner has a reasonable basis that the claimed "separately recovering particle agglomerates from the reactor" is inherently possessed in Bernier et al.

***Claim Rejections – 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claims 1, 3, 4, 6-25, 29-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bernier et al. (US 5,834,571) for the reasons adequately set forth from paragraph 6 of non-final office action of February 15, 2006, and further in view of de Lorenzo et al. (US 4,535,134), for the reasons adequately set forth from paragraph 8 of the office action of October 12 2006.

Applicant's arguments filed September 12, 2007 have been fully considered but they are not persuasive. Applicants argue that the amended claim 1 requires the recovering of the particle agglomerates step to be separate from the step of withdrawing polymer powder from the reactor.

However, Bernier et al. (col. 39, claim 1) clearly claim a method of producing a polymer in a continuously operated gas phase reactor, polymerizing at least one monomer in a bed containing active catalyst formed by catalyst and polymer particles suspended in a fluid (col. 39, line 25-33), and adjusting a discharge rate (continuously or intermittently) to withdraw polymer product from the reactor (col. 39, 40-42). Since the withdrawal of the polymer product also accompanied with the withdrawal of the fluidized recycle gas, the examiner has a reasonable basis that the claimed "adjusting a discharge rate of the polymer powder so as to maintain a constant bed level during polymerization" is met by Bernier et al. since Bernier et al. (col. 39, line 45-49) clearly indicate that the fluidized bed level is maintained by withdrawing recycle gas from the reactor.

Because the polymer product discharge rate of Bernier et al. can be conducted intermittently from the reactor, and that the agglomerate particles contents withdrawn from the fluidized bed reactor are time dependent, therefore, the examiner has a reasonable basis that the claimed "separately recovering particle agglomerates from the reactor" is inherently possessed in Bernier et al.

Regarding applicants' argument that the specification (page 11-12) contains comparative data to show the criticality of "separately recovering particle agglomerates" from the reactor", however, applicants fail to recognize that comparative data as written

in applicants' specification do not indicate that the polymer particles and the particle agglomerates are separately recovered to overcome the rejection set forth. The comparative data (page 11-12) as written only show that polymer particles are withdrawn intermittently where sometimes the particle agglomerates may vary depending on the different time of withdrawal. Therefore, the argued comparative data fail to overcome the rejection set forth.

Regarding the argued "separate nozzle", applicants must recognize that the claims as written do not support such feature.

Regarding the particles having a thickness of at least about 6 mm, or the polymer powder is not in a fluidized state, those features are not supported by the claims.

### ***Conclusion***


Any inquiry concerning this communication or earlier communications from the examiner should be directed to William K Cheung whose telephone number is (571) 272-1097. The examiner can normally be reached on Monday-Friday 9:00AM to 2:00PM; 4:00PM to 8:00PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David WU can be reached on (571) 272-1114. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



WILLIAM K. CHEUNG  
PRIMARY EXAMINER  
William K. Cheung, Ph. D.

Primary Examiner

November 23, 2007